

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: February 1, 2019; Ruling No. 2019-4841; Agency: Department of Corrections; Outcome: Grievant Not in Compliance.



***COMMONWEALTH of VIRGINIA***  
***Department of Human Resource Management***  
***Office of Equal Employment and Dispute Resolution***

**COMPLIANCE RULING**

In the matter of the Department of Corrections  
Ruling Number 2019-4841  
February 1, 2019

The Department of Corrections (the agency) has requested a compliance ruling related to the grievant's July 27, 2018 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding her grievance.

FACTS

On or about July 27, 2018, the grievant initiated a grievance with the agency. On August 15, 2018, the agency issued the grievant its second step response to the grievance. On September 27, 2018, the agency sent a letter of noncompliance to the grievant, via U.S. Mail, indicating that the agency had not received a response from her and would request closure of the grievance if she did not respond within five workdays of receipt of the letter.<sup>1</sup> On September 30, 2018, the grievant responded to the personnel analyst who sent the letter, stating only that she "was not notified of noncompliance." However, it does not appear that the grievance was ever advanced or concluded, and, on January 16, 2019, the agency requested a compliance ruling from EEDR regarding the July 27, 2018 grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>2</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without EEDR's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>3</sup> If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EEDR, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EEDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to

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<sup>1</sup> The letter of noncompliance mistakenly directed the grievant to forward her response to the second step respondent instead of the third step respondent. [Greene Angel]

<sup>2</sup> *Grievance Procedure Manual* § 6.3.

<sup>3</sup> *See id.*

correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EEDR's order.<sup>4</sup>

In this case, the grievant appears to have failed to advance or conclude her grievance within five workdays of receiving the agency's second resolution step response, as required by the grievance procedure.<sup>5</sup> Moreover, the agency notified the grievant of her noncompliance, but the grievant has not clearly indicated that she wishes to advance or conclude her grievance, though some confusion would be understandable given the incorrect directives contained in the letter of noncompliance.

As the grievant has apparently failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure. EEDR therefore orders the grievant to correct her noncompliance **within ten work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude the July 27, 2018 grievance or request qualification for hearing. If she does not, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

EEDR's rulings on matters of compliance are final and nonappealable.<sup>6</sup>



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<sup>4</sup> While in cases of substantial noncompliance with procedural rules the grievance statutes grant EEDR the authority to render a decision on a qualifiable issue against a noncompliant party, EEDR favors having grievances decided on the merits rather than procedural violations. Thus, EEDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, EEDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

<sup>5</sup> See *Grievance Procedure Manual* § 3.2.

<sup>6</sup> See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).